

PETER N. PAILLET.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

THE COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

PETER N. PAILLET vs. THE UNITED STATES.

1. Resolution of the Senate referring the petition to the Court of Claims and original documentary evidence accompanying the same, relied upon by claimant and returned to the Senate.
2. Evidence presented in behalf of the government transmitted to the Senate.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December, [L. S.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

PETER N. PAILLET vs. UNITED STATES.

Claimant's Brief.

The evidence shows that the petitioner was an American citizen, a native of Louisiana, residing in the city of Tabasco, and carrying on

the business of a merchant at the time of the capture of the city by the American troops, in June, 1847.

The petitioner states, that in consequence of his refusal to pay a forced contribution of \$300, to enable the Mexicans to carry on the war, he was imprisoned and maltreated, and threatened with execution, when he was fortunately released by the generous interposition of Mr. P. Sastre y Mazas, the Spanish consul, who paid for him the sum demanded. That a few days after the first attack by the American troops, he was ordered to leave the city, and a passport for this purpose furnished to him. (No. 2, p. 6.)

The letter of Lieut. Magruder, of 17th June, 1847, (p. 7,) written under the direction of Commodore Perry, expresses "much regret that some injury has been done to your property, now occupied by part of the forces of the United States." That the commodore had directed that the doors of the houses on the plaza should be forced. "After your door had been forced, it was discovered to be the property of an American." (It will be remembered that Paillet had left the key with the Spanish consul.) The lieutenant then adds: "You know the difficulty of restraining men after a town has been captured; we did all we could to prevent any injury to your property, but the store in the rear was forced and some wine and goods taken out."

In Lieut. Magruder's letter, 31 July, (p. 7,) he says: "Three of my men were detected, and were immediately placed in close confinement. Their persons were searched and stripped of the articles they had taken from your store, such as blue nankeen, fans, handkerchiefs, and other small articles. Nothing of value was found upon them except a gold watch, which, with every other article recovered, was delivered over to the Spanish consul." The men belonging to this vessel were, however, not the only ones engaged in it. The apartments occupied by the men from the United States sloop of war John Adams led to your back yard and store, and a portion of these men were also detected in the pillage of your effects."

In Paillet's letter to Commander Magruder, 16th August, 1847, (p. 10,) he writes: "I am sorry to say that I found my house in a most wretched state of destruction that would have inspired compassion in any human heart; even my own clothes and that of my family have been taken away, with all my silver plate, of considerable value, \$2,500 in silver, and 120 doubloons in gold," &c., &c.

In the deposition of Gutierrez, he says, that on the troops leaving the house he went there, "and found everything in a state of destruction; all his furniture, and the greatest part of the goods that were in the store torn to pieces, and the ground floor of his house digged in several places." He also says, "my firm opinion is, that his damage amounts from ten to twelve thousand dollars," (p. 13.)

Regil testifies, (p. 14,) that he resided "next door to the residence of Paillet; that immediately after the abandonment of the city by the American forces, I made a thorough examination of the house of said Paillet, and found it in a state of great confusion, and much injured by said occupation as quarters, &c., the furniture very much damaged, the wardrobes, of which there were several, bureaus, and trunks having been broken open and emptied of their contents, the

clothing, linen, &c., were scattered over the floors, together with large quantities of the goods of the store; all of which were ruined by their exposure on the floor, and also by there having been large numbers of demijohns of red wine and jugs of oil broken, and their contents spilt among the clothing, goods, &c., in such large quantities as to nearly float the articles lying scattered about on the floor." He further states that the damage done to Paillet's property was "from ten to twelve thousand dollars."

M. Capella testifies that he was duly commissioned by Commander Van Brunt, civil and military governor of Tabasco, as "alcalde and chief magistrate." He testifies, (p. 15,) that at the time of taking possession, the store was "filled with assorted merchandise, to the amount, as he believes, of \$15,000, and his private dwelling full of all the necessary furniture and wearing apparel of a large and wealthy family." He further says, after describing the condition of the house when he officially inspected it, "in my estimation, firm and conscientious conviction, the actual loss sustained by Mr. Paillet must be over \$12,000. Mr. Paillet's position in society, his proverbial good faith in all his dealings, and the dignified and honorable bearing he took as an American citizen, in refusing to pay over the contribution imposed on him by the Mexican authorities to carry on the war against his countrymen, preferring imprisonment and all the subsequent most arbitrary and harsh treatment, such as banishment from the city, and consequent but involuntary banishment of home and property, entitle Mr. Paillet at least to an indemnity of his losses actually suffered, if not an allowance of damages as equity demands."

The schedule of losses attached to the memorial verified by affidavit and presented to Congress, shows a loss in specie of.....	\$4,470
Less the amount returned by Van Brunt.....	2,444
	<hr/> 2,026
Deducting the whole amount of specie lost from the aggregate loss of.....	7,233
Say.....	4,470
	<hr/> 2,753
Leaves for loss of goods.....	2,026
Add loss of specie.....	
	<hr/> 4,779
Aggregate of loss.....	<hr/>

In the deposition of Lieut. Murray, sailing master of the *Vesuvius*, Commander Magruder, who quartered in Paillet's house the evening he entered the city, he describes the arrest of three of his men found pillaging the store; he says, "other men had evidently been there before them, for articles of merchandise were strewn about the floor, and several cases and baskets containing wine and liquor had been broken open, though but a small portion of their contents appeared to have been consumed."

Lieutenant Murray and party left the next morning about 11 a. m. He says: "The detachment from the *John Adams*, under command

of Lieutenant, now Commander Gansevoort, about forty men, occupied the next building to us, which adjoined the main building of Mr. Paillet, and had a yard running back perhaps the same depth with ours. We left them there when we quitted Tabasco. It was understood that the house would be occupied by some other detachment as soon as we vacated it." Further, this witness testifies, "*the property, both in the store and the house, appeared to have been undisturbed until our detachment took possession.*"

Lieutenant Murray further testifies: "The articles charged in Mr. Paillet's statement would not be out of keeping with the character of the house. It appeared to be the residence of a wealthy man." Again: "The contents of the store appeared to be valuable."

Captain Van Brunt testifies, that "the articles charged for were such as were likely to have been contained in a house of the style which this bore." "I had reason to believe, from the appearance of things, as well as from reports, that the *premises had been plundered, and perhaps to a considerable extent.*"

These two last witnesses were examined on behalf of the government, and their depositions contain the only evidence which the government has offered to invalidate the claim.

This case was presented to Congress for relief at the 1st session of the 31st Congress, and has been twice reported favorably by the Committee on Claims of the Senate. At the last session, a special resolution passed that body referring the petition and accompanying papers to this court, with direction to report the evidence to Congress, "with the opinion of the court upon the legality or equity of said claim."

Two questions are therefore presented:

1st. Whether the claim gives either a legal or equitable claim on the government for damage sustained?

2d. What is the amount of the damage shown by the evidence?

As to the 1st question, it is admitted that the general rule of the law of nations is, that a citizen domiciled in an enemy's country for the purpose of commerce, is "deemed an enemy, with reference to the seizure of so much of his property, concerned in the enemy's trade, as is connected with his residence. It is found adhering to the enemy; he is himself adhering to the enemy." (Wheat. Law of Nations, 378.) But the rule is thus qualified, by the same author. (Idem.) "The national character which a man acquires by residence, may be thrown off at pleasure, by a return to his native country, or even by *turning his back on the country in which he resided, on his way to another.*"

The rule and the exception taken together is, that while the domicile raises the presumption that the party intends to maintain his allegiance to the country of his residence, and claim protection by virtue of that allegiance, yet if on the breaking out of the war the acts of the party show that he intends to abandon that allegiance, and look to the protection solely of his own country, his goods will not be deemed subject of seizure as enemy's goods.

The facts of this case, which show the cruel punishment and banishment inflicted by Mexican authority, because of Paillet's refusal

to furnish the means to carry on the war against his own country, fully bring him within the exception of the rule.

This view is sustained with great precision by the Senate committee.

"While it is a well established principle in the law of nations that the domicil of a citizen in a foreign country at war with his own, impresses with a hostile character his property connected with his residence in the enemy's country, so as to render it lawful prize if liable to capture by the ordinary usages of war, the committee are of opinion that in regard to property under the peculiar circumstances of the memorialists, a different rule should prevail. If it had been in fact the property of an enemy, it would not, in accordance with the modern usages of war, have been subject to pillage after the capture of the city. An alien enemy, it is true, might not be able to obtain redress for such an injury by reason of his own hostile character, but that reason is inapplicable to the case of a countryman of the captors, who at the time of the capture is treated as an enemy by the government where he resides, and denied, on that account, the benefit of his domicil and the means or opportunity of protecting his property. From the moment of his banishment to the interior as an American citizen, claiming exemption as such from the contributions demanded of him for the war, it appears to the committee that the hostile character which might otherwise have attached to the memorialists as a voluntary resident at Tabasco ceased; and that while suffering in the enemy's territory the disabilities of an American citizen, he had a right to expect for his property the protection of his countrymen. If under such circumstances his property, left under the charge of the representative of a neutral government, instead of being protected by the captors of the city, is appropriated by them to the public use, or injured while in their forcible occupation—especially when it has been continued, as in this case, after notice of the circumstances entitling it to protection—it is an injury for which the memorialist, in the opinion of the committee, has an equitable claim on the government for indemnity."

But admitting this claim could not be urged on the ground of its *legality*, that it is such an one as could not be enforced in a court of law if the government were suable, I think there can be no doubt of the *equity* of the claim, and it is on the equity as well as the legality of the claim that the court is to give its opinion.

On the second question, as to damage, the evidence establishes positively—

1. That when Paillet was banished his house was locked up, and the key entrusted to the Spanish consul.

2. That on landing the officers of the United States took possession and broke open the doors.

3. That the occupation of the troops, and their pillage, produced great damage.

4. That in the opinion of witnesses who were on the spot, and examined the premises as soon as they were evacuated, those damages amounted to from ten to twelve thousand dollars.

5. That by the judgment of the officers examined by the government, the articles charged to have been lost were such as were likely

to have been found in such an establishment. These constitute the predicate for the admission of Paillet's sworn statement as to the itemized list of his losses, and bring him within the exception to the rule that a party cannot testify in his own cause.

The exception arises from the "necessity of the case, and the nature of the subject; no proof can otherwise be expected. For when the law can have no force but by the evidence of the person in interest, then the rules of the common law in respect to evidence in general are presumed to be laid aside; or rather, the subordinate are silenced by the most transcendent and universal rule, that in all cases that evidence is good, than which the nature of the subject presumes none better to be attainable." (1 Greenleaf, Evid., p. 348.)

Again: "In trials of fact without the aid of a jury, the question of the admissibility of evidence, strictly speaking, can seldom be raised; since, whatever be the ground of objection, the evidence objected to must of necessity be read or heard by the judge, in order to determine its character and value. In such cases the only question in effect is upon the sufficiency and weight of the evidence." (Idem., p. 49.)

If we deduct from the whole amount claimed the specie returned, as also that which it is alleged has never been recovered, it leaves the amount of \$2,753, and with the character for probity which the evidence shows the petitioner enjoyed, this would be the very least amount he should receive, and this is the amount which, under Senator Wade's bill, he would have been entitled to.

P. PHILLIPS,
Solicitor for petitioner.

WASHINGTON, November 23, 1858.

IN THE COURT OF CLAIMS.—No. —.

PETER N. PAILLET *vs.* THE UNITED STATES.

Deputy Solicitor's brief.

I.—FACTS AS UNDERSTOOD BY THE SOLICITOR.

The petitioner appears to be a citizen of the United States, and to have established himself in Mexico in the year 1827. (See passport, Record, p. 5.)

During the war between the United States and Mexico he was a resident of the city of Tabasco, where he had and occupied a dwelling house handsomely furnished, fronting on the plaza; and in rear of the dwelling and fronting on a back street was a store filled with merchandise, principally dry goods, with some wines and liquors.

On the 18th of December, 1846, he was required by a law that day published (see petition, p. 4, and passport, p. 6) to retire into the country 20 leagues from Tabasco; and did so, taking all his family with him, and leaving the keys of his house with the Spanish consul.

On the 16th day of June, 1847, about 4 o'clock p. m., Tabasco was captured by the American forces under Commodore Perry, (see his report, Ex. Doc., H. R., No. 1, 2d sess. 30th Cong., p. 1209;) it remained in their possession until the latter part of July following. (Id., p. 1227; deposition of Regil, Record, p. 14.)

When the troops entered the city they sought shelter in the houses around the plaza, all of which seem to have been alike closed, and had to be broken open (letter of Commander Magruder, Record, p. 7) before the Americans could obtain shelter from the weather.

Mr. Paillet's house was supposed to belong to a Mexican, yet strict orders were given that property found therein should be respected. (Murray's deposition, Record, p. 21.)

The condition of the house when entered showed that it had been vacated hastily.

The private property in the dwelling house was scrupulously cared for; none was taken during that night, or before Lieutenant Murray left the next day, June 17. (See his deposition, Record, p. 21.)

The store, however, was broken open by some of our men late on the evening of the occupation, and some property taken therefrom; but this pillaging was stopped almost immediately; all that could be recovered was restored; the store was secured and sentries placed to protect it. (Murray's deposition, page 21; Van Brunt's deposition, p. 23.)

Lieutenant Murray's detachment vacated the house and left the city at 11 o'clock on the 17th of June, leaving Commander Magruder in the house. Commander Magruder, the same day, June 17, wrote to Mr. Paillet, expressing the regret of Commodore Perry at the pillage of the store, and stating that everything had been done for the security of the goods and furniture. (Letters of June 17, Record, p. 7, and July 31, id., p. 8.)

On the 22d of June the house was then vacated entirely by the troops at the instance of the Spanish consul, Pablo Sastre y Mazas, who was charged by Mr. Paillet with the care of his property. (See his letters, Record, pp. 6 and 9, and Capella's deposition, p. 15.)

Commander Van Brunt assumed command of Tabasco, on the 22d of June, (see his report to Commodore Perry, Ex. Doc. No. 1, H. R., 2d sess. 30th Cong., p. 1222, and Mr. Sastre's letter, Record, p. 6.) Soon after, and probably on the night of June 28, (see letter of Mr. Sastre y Mazas, Record, p. 9,) the house was broken open and plundered, and great damage done to the property by "some desperadoes," (see Van Brunt's deposition, Record, p. 23, and Capella's p. 15,) who were most probably Mexicans. (Van Brunt's 2d answer.) They had dug over the floors in search of money. This occurrence being reported to Mr. Capella, acting alcalde and chief magistrate, he repaired to the house, and, in order to preserve what remained of the property for the owner, he suggested that search be made for concealed treasure. (See his deposition, Record, pp. 15 and 16.) This being done by United States officers and men, with the assent of Governor Van Brunt, a quantity of money was found which was taken charge of by the latter. The finding of this money was officially reported

by Commander Van Brunt to Commodore Perry, under date of July 1, 1847, in the following terms:

"I have on board \$2,442 75, said to belong to Peter N. Paillet, who calls himself an American citizen. This money was found buried back of the store which adjoins the 'government house;' and the information of its being there was communicated to Captain Bigelow by Captain Taylor, who was present with three of his men when it was found. It was taken up in the presence and under the direction of Lieutenant William S. Blanton, who delivered it to me by order of Captain Bigelow." (Ex. Doc. No. 1, Ho. Reps., 2d sess. 30th Con., p. 1231.)

This money was restored to Mr. Paillet on his demand. (See petition, Record, p. 4, and his letter to Commander Magruder, Record, p. 11.)

No further depredations appear to have been committed on the property; the condition of the property after this outrage, as described by Mr. Capella in his deposition, (Record, p. 15,) agreeing with the description of Mr. Regil in his deposition, (Record, p. 11,) and of Mr. Paillet in his letter to Commander Magruder, (Record, p. 11.)

II.—*Only a very small portion of the damages and losses complained of was sustained while the house was occupied by the American troops.*

The statement of losses at page 12 of the record comprises two classes of goods, 1st: furniture and clothing in the dwelling-house, and 2d: merchandise in the store. Of this last, the entire amount lost is set down at \$500, including 25 demijohns of Malaga wine valued at \$200, which were removed into the dwelling-house on the evening of the 16th, before any quantity had been abstracted, (Murray's deposition, Record, p. 21.) Certainly not more than \$300 worth of store goods were taken by marines and sailors on the occasion of the first plunder.

Lieutenant Murray's deposition, (Record, p. 21,) Magruder's letters to Paillet, (Record, p. 7,) Mr. Sastre's letter to the same, (Record, p. 6,) prove that nothing was lost from the dwelling-house up to the time when the house was vacated by Commander Magruder, when the house was securely fastened and restored to the charge of Mr. Sastre.

It was unquestionably in the subsequent plunder of the house, on the night of the 28th June, that nearly all the loss suffered during the American occupation occurred. The only evidence to impute this to the Americans is that of Mr. Sastre, (Record, p. 9,) who, in a letter to Mr. Paillet, says Commodore Van Brunt told him the house was broken open by his order to search for treasure; but this is an entire mistake, as shown by Capella's and Van Brunt's depositions, (Record, pp. 15, 22.) The despatches in the public document, above referred to, show that the American force was very small, and that military control of the town was maintained only by the guns of the war vessels. The plunderers of the house were as probably Mexicans as Americans, and Commander Van Brunt thought then and thinks now they were Mexicans, (2d answer, Record, p. 23.) Had the property been stolen by the Americans, the friendly disposition of the

officers and the impossibility of concealment would have caused their detection.

The particulars of the damage suffered are supported solely by Mr. Paillet's own evidence. Waiving the question of its admissibility, and referring to its sufficiency, it appears that the loss estimated by Mr. Paillet is the difference between the value of the property left by him in his house in December, 1846, and that found by him on his return to the house after the evacuation of the city by the American troops. Some things may have been stolen or removed before and after this period.

III.—*The occupation of Mr. Paillet's house by the American troops was justified by the laws of war.*

The ground that the character of Mr. Paillet as an American citizen should have exempted his house from occupation is untenable. The national character of the owner of the soil is not impressed upon the soil. "Personal property," said the Supreme Court, "may follow the person anywhere; and its character, if found on the ocean, may depend on the domicile of the owner. But land is fixed. Wherever the owner may reside, *that land is hostile* or friendly according to the character of the country in which it is placed." (30 hogsheads of sugar *vs.* Boyle and others, 9 Cranch, 190, and cases there cited.) In that case the produce of hostile land, where land and produce both belonged to a friend, was condemned as enemy's property; *a fortiori*, the land itself in a hostile country, though belonging to a friend, where the laws of war justified and necessity required the occupation of enemy's land, is to be treated as enemy's land. (Wheaton's International law, part iv, chap. 1. sec. 21.)

IV.—*Neither the occupation of his property by the troops, nor any other act of the officers of the United States, was the cause of damage to the claimant.*

As shown above, the property actually occupied by the American officers, that is, the dwelling-house, was secured from damage during the occupation, and safely delivered into the custody of Mr. Paillet's agent. The store, which was not occupied, was the only place pillaged during that occupancy. There is no evidence to connect this pillage with the occupancy of the main building. Nor is there any evidence to show that the occupancy of the dwelling-house from June 16th to June 23d, had any part in causing the plunder on the night of June 28.

V.—*The United States are not liable for the damage done on this occasion by their soldiers, marines, or sailors.*

It is a settled principle of law that government is not liable for the errors and negligence of its officers and agents, even to the extent that an individual would be. (Decisions of this court in Thistle's and Clay's cases.) But the master, who is liable for damage caused by his

servant's negligence acting in his service, is not liable for his acts done with express malice, and still less for felonies committed not even under color of acting in his service. It would be carrying the liability of the government to a strange extreme to condemn it to pay for property stolen by soldiers or any other person in its hire.

VI.—*The claim is no more equitable than legal.*

The evidence shows that the officers of the United States evinced the most scrupulous regard for the property of Mr. Paillet, even when they believed it to belong to an enemy; and nothing could exceed their anxious care for his interests when they found him to be an American citizen. They entered his house only when the Mexicans declined to point out the public houses, and to obtain shelter after a day of great exposure. (Capella's deposition, Rec., p. 15; despatches Ho. Doc. 1, 2d session 30th Congress, p. 1214.) Even an officer of Commander Magruder's rank attended personally to the nailing up of his store-house, (see his letter, Rec. p. 8;) and when the dwelling-house was afterwards broken open, every exertion was used to secure and preserve the treasure supposed to be concealed there.

On the other hand, Paillet had no special claims upon the consideration of this government. He had, it seems, been domiciled in Mexico for twenty years, and, after the outbreak of the war between the United States and Mexico, chose to remain in and adhere to Mexico, although the right of withdrawal with all his property was secured to him by treaty. (See treaty of April 5, 1831, art. xxvi, 8 Stat. 422.)

That he acted as consular agent for the United States is no more than Mexicans or other foreigners willingly did at other ports; and that he refused to pay a contribution is what most men would have done if they had so good a pretext for holding on to their money; it argued no remarkable degree of patriotism.

J. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

PETER N. PAILLET *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

The petitioner makes in his petition the following averments:

1. That he is a citizen of the United States, and has a commercial house in the city of San Juan Bautista, the capital of the State of Tabasco, in Mexico.

2. That General Traconis imposed upon him a contribution of *three hundred dollars* for expenses of the war against the United States; that, having refused to pay the contribution, he was imprisoned and his life was threatened, but that the Spanish consul offered the money to Traconis, and the petitioner was then discharged from imprisonment.

3. That afterwards the city was menaced by the forces of the United States, and he sent away his family; that the next day the Americans attacked the city, and some cannon balls entered his house, breaking through his wardrobe, furniture, and beds of his family

4. That a few days afterwards General Traconis, by a passport, ordered him to retire twenty leagues from the city; that he did so retire, "with all his family, giving the keys of his house to the Spanish consul, with a general state of his interests and of the merchandise of his stores."

5. That some time afterwards the city was taken by the United States; that their troops forced his doors and entered his house to lodge therein; that his furniture was reduced to a miserable state, his wardrobes were broken open, and most of his clothes, and that of his family, were lost.

6. That his house was opened a second time by the troops of the United States; and that, by digging in many places, they found \$2,200 in silver and 20 in doubloons in gold; that instead of those two sums of money they ought to have found in the same place \$2,500 in silver and 120 doubloons in gold, making in all the sum of \$4,400.

7. That he was injured to the amount of *four thousand seven hundred and seventy-nine dollars.*

1. As to the first averment.

This averment is sustained by the evidence.

2. As to the second averment.

There is no evidence in relation to this averment.

3. As to the third averment.

There is no evidence as to the material part of this averment.

4. As to the fourth averment.

There is on file in this case a paper purporting to be a passport from Juan Bautista Traconis, governor and commandant general of the State of Tabasco, in the following words:

"I grant a passport to Don Pedro Nuel Paillet, a native of the United States of the north, that, in compliance with a law this day published, he may pass into the country as far as the town of Teapa without molestation." But this paper is not duly authenticated.

5. As to the fifth averment.

Captain G. A. Magruder, in a letter addressed to ——— dated, Tabasco, June 17, A. D. 1847, said:

"I am directed by Commodore Perry to say that he regrets very much that some injury has been done to your property now occupied by part of the forces of the United States. When we reached the plaza it was raining very hard, and it was necessary that our men should be placed under cover, and the commodore directed the doors of the houses on the plaza to be forced. After your door had been forced, it was discovered to be the property of an American. * * We did all we could to prevent any injury to your property; but the store in the rear was forced, and some wine and goods taken out. Many things were recovered and delivered to your friend, the Spanish consul. * * * Rest assured that all has been done by the officers to prevent injury to your goods and furniture."

In a letter from Captain G. A. Magruder to the petitioner, dated United States brig Vesuvius, Laguna, July 31, A. D. 1847, he said :

"I * * * regret to perceive that you do not appear fully to appreciate the earnest desire and the actual personal efforts of myself, as well as the officers under my immediate command, to preserve from injury and depredation the property which circumstances obliged us to occupy during the three days we were stationed at Tabasco. We did not know it was the property of an American citizen until after we had taken possession, and the commodore would doubtless have ordered us to remove had there been other shelter for our men around the square on which our forces were concentrated. The strictest orders were given to the men not to injure or molest the property in any way. It was explained to them that it belonged to our countryman, whose interests it was our duty to protect; and the severest punishment was threatened in case they were detected in committing any outrage. Three of my men were detected, and were immediately placed in close confinement and sent on board at the earliest moment. Their persons were searched and stript of the articles they had taken from your store—such as blue nankeen, fans, handkerchiefs, and other small articles. Nothing of value was found upon them except a gold watch, which, with every other article recovered, was delivered over to the Spanish consul, Mr. Sastre. Having a carpenter with me, I attended personally to the fastenings of the doors of the store, which had been forced open, and placed a sentinel to avoid further depredation. It was a source of deep mortification to myself, as well as to the commander-in-chief, that, notwithstanding all our efforts, these irregularities should have been committed; but we have the gratification of knowing that no efforts were spared on our part to prevent it.

The men belonging to this vessel, however, were not the only ones engaged in it. The apartments occupied by the men from the United States sloop-of-war John Adams led to your back yard and store, and a portion of these men were also detected in the pillage of your effects. Had I *have* known that you had a store adjoining your house, much, if not all, the mischief might have been prevented; but the injury had been done before I was aware of it. You cannot be ignorant of the difficulty of restraining men who have succeeded in carrying the defences of an enemy and capturing a town; plunder is considered by them as lawful and proper, and all the vigilance of the officers in any service has heretofore been insufficient wholly to prevent it."

Ysidoro Gutierrez testifies that when the city of Tabasco was taken by the American troops in June, A. D. 1847, the petitioner's house was forced and occupied as quarters by them; and on their leaving the city he went to the house and found everything in a state of destruction; all the petitioner's furniture and the greatest part of the goods that were in his store torn to pieces, and the ground floors of his house digged in several places; that he saw a considerable quantity of money taken away and carried on board one of the American armed vessels; and that his firm opinion is that his damage amounts to *twelve thousand dollars*.

Manuel DeRegil testifies that during the time the city of Tabasco was in the possession of the armed forces of the United States, from

about the 16th day of June, A. D. 1847, to the 23d day of July, A. D. 1849, the house and store of the petitioner in that city were broken open by those forces and occupied by them as quarters; that the residence of the witness, at and during that time, was the next door to the petitioner's residence; that he made a thorough examination of the petitioner's house immediately after the abandonment of the city by the American forces; that he found it in a state of great confusion and much injured by its occupation as quarters, &c.; the furniture very much damaged, the wardrobes, (of which there were several,) bureaux, and trunks, having been broken open and emptied of their contents, and the clothing, linen, &c., together with large quantities of the goods of the store, scattered over the floors; all of which were ruined by their exposure on the floors; large numbers of demijohns of red wine and jugs of oil having been broken and their contents spilt among the clothing, goods, &c., in such large quantities as to nearly float the articles lying scattered about on the floors; that there was a rumor that there was a large amount of specie (one hundred and fifty thousand dollars) concealed in the house, the property of the petitioner, and, in consequence of the rumor, several excavations were made under the ground floor of the house for the purpose of finding the money; that a quantity of specie was actually found and sent on board one of the armed vessels belonging to the occupying forces; that the excavations very much injured the house, so much so that it was in a perfect state of ruin at the time the forces abandoned the city; that the petitioner, in the opinion of the witness, suffered damage in his property to the amount of from *ten to twelve thousand dollars*; the latter sum he considers to be a moderate estimate of the damages, during the time of the military occupation of the city by the forces of the United States, and that all he stated with reference to the destruction and injury of the property of the petitioner are facts notoriously known to nearly every one who was in the city during the time of the same being occupied as already mentioned.

M. Capella testifies that in June, A. D. 1847, Commodore Perry took possession of the city of Tabasco, and named Commander G. F. Van Brunt civil and military governor of the same; that the witness was duly commissioned by Governor Van Brunt to act as alcalde and chief magistrate; that when the American forces took possession of the city Commodore Perry, the commander-in-chief, desired that the public buildings should be designated, and the keys of the same delivered to him; that, there being no one to satisfy him, possession was taken of such buildings as he thought most conducive to the comfort and safety of his forces, among others of the house of the petitioner, and adjoining store, filled with assorted merchandise to the amount, as the witness believes, of at least \$15,000, and his private dwelling full of all the necessary furniture and wearing apparel of a large and wealthy family; that, a few days having elapsed, Commodore Perry, learning that the house belonged to an American, Mr. Paillet, who had been ordered out of the city on account of having refused to pay a contribution of \$300, levied on him by the Mexican authorities to raise funds to carry on the war with the United States, ordered the house to be evacuated and the doors closed; that about this time the

witness entered upon his official duties, he being empowered not only to act as judge in litigated cases, but also to preserve order, and to protect the property of unoffending residents; that, in the prosecution of such duties, his attention was called by Captain W. B. Slack, commander of the land forces, to the property of the petitioner, which had been broken open by some desperadoes, it having been rumored that there was about \$150,000 in specie buried in the house; that he entered the house then for the first time, accompanied by Captain Slack and several men, for the purpose of securing the doors and preventing further depredations; that he was struck with astonishment at the disorder and complete desolation of everything in it—the wardrobe and trunks broken open, cases of merchandise in the same condition, and what left of them disseminated about the floor, and here and there lying, void of their contents; watch, ring, breast-pin, and ear-ring cases, and all the plate and valuables of the house missing, the floors of almost all the chambers of the house having been dug in search of the rumored treasure; that the witness, to preserve what remained of the property, consulted with Governor Van Brunt on the propriety of searching the building to discover, if possible, any specie, and take charge of the same for the petitioner; that Governor Van Brunt, assenting, named Lieutenant William L. Blanton, of the navy, Captain Taylor, owner of the merchant schooner Spitfire, and four men, to accompany the witness, who proceeded to the house, and the first place likely for a deposit being singled out to the men, they began the diggings. * * * That, on entering the chamber where the work was carried on, a case had been [was] taken out, which contained a considerable amount of specie, together with gold doubloons; that the box was deposited by Governor Van Brunt, and the sum used by his order, and applied to the payment of the troops, but afterwards, the witness believes, paid over to the petitioner, but not to the full amount claimed by him; that, in the estimation, firm and conscientious conviction of the witness, the actual loss sustained by the petitioner must be over *twelve thousand dollars*; that the petitioner's position in society, his proverbial good faith in all his dealings, and the dignified and honorable bearing he took as an American, in refusing to pay over the contribution imposed on him by the Mexican authorities to carry on the war against his countrymen, preferring imprisonment and all the subsequent most arbitrary and harsh treatment, such as banishment from the city, and consequent, but involuntary, abandonment of house and property, entitle the petitioner at least to an indemnity for his losses actually suffered, if not to an allowance for damages, as equity demands.

Lieutenant F. K. Murray, a witness on the part of the United States, testifies, that he was sailingmaster on board of the bomb vessel Vesuvius, Com. Magruder, and accompanied a detachment from that vessel which entered Tabasco in June, A. D 1847; that, on the evening of their entry into the city, quarters were assigned them in the house of the petitioner; that the house appeared to have been vacated hastily, and they presumed it had been occupied by a Mexican; that strict orders were given that the property found there was to be respected; that there was no instance of a violation of these

orders until after dark, when it was reported to him by a petty officer (he being the executive officer of the detachment) that some of the men had broken into the store, situated within the same enclosure, and supposed to belong to the house; that on proceeding to the store he found three men pillaging, and placed them in charge of a guard that accompanied him; that this was about 9 o'clock p. m. Other men had evidently been there before them, for articles of merchandise were strewn about the floor, and several cases and baskets containing wines and liquors had been broken open, though but a small portion of their contents appeared to have been consumed; that the three men who had been captured in the act of pillaging were searched, and several articles of small value, together with a gold watch, were taken from them; that they were then placed in the guard-house; that the liquors and wines found in the store, of which there was not a great quantity, were removed to the rooms of the officers, where they were left undisturbed while they (the witness and his detachment) occupied those quarters; that the object of their removal was not only to preserve them for their owner, but to preserve the men from intoxication; that on mustering the detachment immediately on discovering this affair, many of them were found under the influence of liquor; that the whole detachment then, with the exception of five or six sober and trusty men, were locked up in one of the rooms of the house, to guard effectually against any further depredation; that the store was nailed, and a sentry stationed at the door; that he is certain that there was no further pillaging by his detachment up to the moment of their leaving the town next day; that they left about 11 o'clock a. m.; that the furniture and private property which were in the main building, occupied by the officers, were scrupulously cared for, and were untouched; that every article of value found in it was handed to the commanding officer, to be returned to the owner; that he knows nothing of what occurred subsequent to their departure, except from hearsay; that the detachment from the John Adams, under the command of Lieutenant, now Commander Guert Gansevoort, about sixty men, occupied the next building to them, which adjoined the main building of the petitioner, and had a yard running back, perhaps the same depth with theirs; that they left them there when they quitted Tabasco; that he left the house of the petitioner before the other officers of the detachment, to march the men to the boats which were to convey them to the steamer; that it was understood that the house would be occupied by some other detachment so soon as they vacated it; that Captain Magruder was among the officers who were there when he left; that the store-house fronted upon a back street, and contained articles of merchandise; that the property, both in the store and the house, appeared to have been undisturbed until his detachment took possession; that after they had nailed up the store, one of the crew of the John Adams was arrested for entering or attempting to enter it; that there was a sentry both on the inside of the yard and at the door of the street; that it was a very fine house, with a good many rooms; the furniture was very good; that the articles charged in the petitioner's statement would not be out of keeping with the character of the house; it ap-

peared to be the residence of a wealthy man ; he should think there were as many as twenty-five demijohns of wine taken into the house, and the contents of the store appeared to be valuable.

Gershom G. Van Brunt, a captain in the navy of the United States, and a witness on the part of the United States, testifies that he was on duty at Tabasco, Mexico, after its capture by the United States forces, in June, A. D. 1847 ; that he never occupied a house belonging to the petitioner ; he never saw him ; he and his family left Tabasco before it was taken possession of by the United States forces, and did not return whilst they held possession ; that a house, which he was told belonged to the petitioner, was occupied by some of their officers and men the night they took possession of the city, but he does not recollect who they were ; it is probable that Lieut. Murray may have been of the party ; that it was found unoccupied, and they sought shelter in it from the violence of the rain ; that as soon as possible after the capture of the city, measures were taken by Commodore Perry to secure the property found in this house from destruction by having the doors and windows secured ; that soon after he assumed the command of the city, a report was made to him that the petitioner's house had been broken open ; he then visited it with some of his officers, and found the wardrobes open, many valuable articles scattered around, consisting of demijohns, articles of clothing, &c. ; but what articles had been taken, or by whom, it was impossible for him to ascertain, although every effort was made to do so ; that it was then, and it is now his belief, from the reports made to him from the officers under his command, that the house and store had been pillaged by Mexicans ; and he took such measures as seemed necessary to prevent further depredations by placing sentries, &c. ; that it is his belief that if the petitioner had remained or left any person in charge of the property he would have lost nothing, certainly not at the hands of the United States officers and men ; that he never occupied the house or visited it on any other occasion than the one already mentioned ; that he saw some wardrobes, but did not observe what they contained ; he did not see the spoons, forks, plates, or pots of silver described in the petitioner's statement ; that he has no personal knowledge of any case of pillage either from the house or the store ; that nothing was taken by authorized officers from the house or store for the use of the troops, to his knowledge ; that he was told at the time that the petitioner was an American citizen, and remembers to have expressed astonishment that he had not remained and taken care of his property ; that he does not recollect the number of demijohns of wine he saw upon the occasion of his visit before referred to ; nothing was then removed from the house, or subsequently, to his knowledge ; that he does not recollect who was left in charge of the petitioner's property when the city was evacuated ; that he took possession of *two thousand four hundred and forty-four dollars* in silver, found upon the premises by some of his officers ; he has no personal knowledge of the circumstances under which it was found ; he had it counted and sealed, and as soon as he was convinced that the petitioner was its owner it was delivered to his order ; he has no knowledge of doubloons or any other money being found or carried from

the petitioner's premises; that he has no reason to believe that the petitioner lost any property by the acts or defaults of any of the officers or men of the United States forces after he assumed the command; that the character of the house and furniture was very respectable; he should say that the articles charged for were such as were likely to have been contained in a house of the style which this bore; he formed no estimate of the value of the contents of the store at the time of his visit; he had reason to believe, from the general appearance of things, as well as from reports, that the premises had been plundered, and perhaps to a considerable extent.

Commander Guert Gansevoort, a witness on the part of the United States, testifies that he was in command of a detachment from the United States sloop-of-war John Adams, in June, A. D. 1847, at the taking and occupation of the town of Tabasco, Mexico; he was quartered in the public square; does not recollect the names of any of the citizens, nor any one by the name of Paillet; does not know of any property taken by men of his detachment from the store in the rear of Mr. Paillet's residence, or any other store, or from the dwelling-house of Mr. Paillet; has no recollection of Mr. Paillet or his premises; that he saw ribbons, cloths, and other articles of merchandise scattered about in the square at the time specified, but in regard to the owner is entirely ignorant; that precautions were taken by Commander Perry, on entering the place, to prevent pillage, and he does not know any loss was occasioned by the acts or defaults of the officers of the United States forces.

This case was referred to this court by the following resolution of the Senate:

"Resolved, That the petition and accompanying papers in the case of Peter N. Paillet, praying indemnity for losses sustained during the war with Mexico, be, and the same are hereby, referred to the Court of Claims for examination of the character and amount of losses sustained by said petitioner, whether of goods, wares, merchandise, and money, as alleged in said petition, and to report to Congress the evidence in the case, with the opinion of the Court upon the legality or equity of said claim."

The first point for consideration is, whether this is a case of which this Court has jurisdiction. It was referred by the Senate. The reference itself, independently of the character of the case, gives this Court jurisdiction to *hear* and *determine* it, and it is the duty of this Court, after having finally acted upon it, to report it to Congress, stating "the material facts, which they find established by the evidence, with their opinion in the case, and the reasons upon which said opinion is founded." (10 Statutes at Large, p. 612, ch. 122, §§1-7.)

What, then, is this case? The petitioner was a citizen of the United States, domiciled in the city of Tabasco, Mexico, where he was engaged in trade as a merchant. His dwelling-house fronted on the plaza, and in the rear of it, fronting on a back street, was his store-house. When the war broke out between Mexico and the United States, instead of repairing to his own country, he remained at Tabasco, in the regular prosecution of his business. In June, A. D. 1847, the city of Tabasco was captured by the forces of the United States

under Commodore Perry. The petitioner was not then in Tabasco. He had previously gone, with his family, into the interior of the country, leaving his property and the keys of his house and store in the care of the Spanish consul.

When the forces of the United States reached the plaza, it being necessary, in consequence of a heavy rain, to place the men under cover, Commodore Perry ordered the doors of the houses on the plaza to be forced. Under this order the doors of the petitioner's house were forced, and the officers and men belonging to a detachment from the bomb-vessel *Vesuvius*, under Commander Magruder, took possession of the house and occupied it as quarters. About 11 o'clock the next day the men, with Lieutenant Murray, returned to the ship, but Commander Magruder and the other officers remained at the house two days longer. When they took possession of it, it had the appearance of having been hastily vacated, but the property in it, as well as in the store, had not previously been disturbed.

Strict orders were given that the property found in the house was to be respected. But after dark, about 9 o'clock p. m., it was discovered that some of the men had broken into the store. Three of them were found pillaging, and placed in the guard-house. A gold watch, with several articles of small value, was taken from them, and subsequently delivered to the Spanish consul as the petitioner's agent. Other men had preceded them. Articles of merchandise were found strewn about the floor, and several cases and baskets containing wines and liquors had been broken open and a small portion of their contents consumed. The liquors and wines were removed to the rooms of the officers. Many of the men being found under the influence of liquor, the whole detachment, with the exception of five or six men, were locked up in one of the rooms. The store was nailed up, and a sentry placed at the door; there was a sentry on the inside of the yard and at the door on the street. The furniture and other property in the main building, occupied by the officers, was scrupulously cared for and untouched.

It does not appear that after the detachment from the *Vesuvius* and the officers, with Commander Magruder, left the house it was again occupied by any of the forces of the United States. It had in the mean time been discovered that the house and store belonged to a citizen of the United States. M. Capella states that a few days after the capture of the city, orders were given to evacuate the house and close the doors. But the men from the *Vesuvius* certainly left it early the next day, and the officers a few days afterwards; and Captain Van Brunt says that the house was occupied by "some of our officers and men *the night* we took the city." Captain Van Brunt also states that, "as soon as possible after the capture of the city, measures were taken by Commodore Perry to secure the property found in this house from destruction by having the doors and windows secured." Our conclusion from the whole evidence is, that it was not occupied by any of the forces of the United States after the detachment from the *Vesuvius* left it.

After Commander Van Brunt assumed the command of the city a report was made to him that the petitioner's house had been broken open. He then visited it and found the wardrobes open and many

valuable articles scattered around, consisting of demijohns of wine, articles of clothing, &c., and thereupon took such measures as seemed necessary to prevent further depredations, by placing sentries, &c. But all this occurred after Commander Magruder's detachment had left Tabasco. M. Capella says that the house had been broken open by some deperadoes, it having been rumored that there was about the sum of \$150,000 in specie buried in some part of the house; and that his attention being called to it, he entered the house and found the wardrobes and trunks broken open, and cases of merchandise lying scattered about the floor void of their contents, "the floors of all the chambers of the house having been dug in search of the rumored treasure." Search was then made in the presence and under the direction of Lieutenant William S. Blanton for the money supposed to be concealed there, and the sum of \$2,444 was found, and delivered by him to Captain Van Brunt, who had it counted and sealed, and subsequently caused it to be delivered to the petitioner.

The damage which was done to the petitioner's property, whilst his house was occupied by the forces of the United States, must have been small. The breaking open of the wardrobes and trunks and cases of merchandise, and the digging of the floors of the chambers, took place afterwards. The only acts which were done by the authority of the officers in command were the breaking open of the doors of the dwelling house, and the occupancy of it for a single night by the men, and two or three days by the officers of Commander Magruder's detachment. Whatever else occurred was done not only without the authority, but against the express orders of the officers, and notwithstanding their utmost efforts to prevent it. The precise "character and amount of losses sustained by" the petitioner, either whilst his house was occupied by the forces of the United States or afterwards, the evidence does not enable us to determine.

Under such circumstances it does not seem to us that the petitioner can, upon any principle, have any just claim against the United States. Though he was a citizen of the United States, yet he was domiciled in Mexico; and notwithstanding war had been raging for many months between his own country and Mexico he still remained in Mexico, and continued the prosecution of his trade and business there. He had been domiciled in that country for nearly twenty years. He had settled there, and engaged in the trade of the country, and given such evidence *animi manendi*, of an intention to remain as stamped him with the national character of the State in which he resided. He was not, strictly speaking, an enemy of the United States, yet he was such in reference to the property connected with his trade and his residence. It was found adhering to the enemy; and he himself was adhering to the enemy, though not criminally so. He had taken no steps to throw off the national character which he had acquired by his residence in Mexico, and was, therefore, bound by all the consequences of it. He not only had not returned to his native country, or turned his back on Mexico on his way to another country, or commended his removal, *bona fide*, without an intention of returning, but he had not even contemplated such a removal in any event. On the contrary, he continued to retain his domicile, and his property

there belonged to him in his character of subject or citizen of Mexico, and consequently was subject to the laws of war and of reprisals as if he had been actually an enemy. (Wheaton's Inter. Law, Book IV, ch. I, § 16, p. 394, § 17, p. 401—405, § 18, p. 407.) But the United States did not wilfully inflict any serious injury upon him. His house was occupied by their men from the Vesuvius a single night, and afterwards by their officers two or three days. Their conduct towards his property was characterized by all the moderation and all the scrupulous regard for his private rights and interests that the most liberal and most humane rules of modern warfare require. The damage which he sustained was but the result of the chances and dangers of war, and the disturbed state of the place of his residence. It was his choice to encounter the hazard of such contingencies, and he alone must bear their bitter fruits as regards his own property. He probably found, or thought he would find, his interest in remaining in Mexico; and, in common with hundreds of others, he became a sufferer from the consequences of the war and its attendant evils. But he has no just claim for relief against the United States. It is impossible that any country, however humane and however anxious to mitigate the evils of war, could have a treasury large enough to furnish indemnity in all cases like the present. The only ground on which the petitioner himself seems to suppose that he is entitled to consideration is, that notwithstanding his long residence in Mexico he still retains his love for his native country; that he was unwilling to pay a contribution, which was levied upon him to aid in defraying the expenses of the war against the United States; and he was required to retire into the interior of Mexico; and that in times past his house had been a friendly shelter to every countryman who had fallen into distress. But whilst all this, if it be true, may command for him as a man and as a citizen of the United States our respect and good will, and, if he were in circumstances to need charitable relief, would present a strong claim upon our benevolence, still it is wholly insufficient to sustain a claim upon the justice of the United States for indemnity.

Our opinion "upon the legality" and "equity of said claim" is, that the petitioner is not entitled to relief.